LIBRARY

Office Supreme Court, U.S.
FILED
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962

No. 227

DAVID WASSERMANN,

Petitioner,

against

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, THIRD DEPARTMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK

JACOB RASSNER,
Counsel for Petitioner,
Office & P. O. Address,
15 Park Row,
New York 38, N. Y.

INDEX

	PAGE
Opinion of Court of Appeals	1a
Opinion of Appellate Division—Third Department	7a
Vote of Board of Regents	9a
Report of Regents' Committee on Discipline	10a
Report of Regents Committee	13a
Report of Findings, Determination and Recommendation of Sub-Committee on Grievances	16a
Laws Involved	22a
Appellate Division Order Denying Leave to Appeal	30a
Motion for Leave to Appeal to Court of Appeals	32a
Affidavit of Arnold Ostwald in Support of Motion for Leave to Appeal	34a
Brief in Support of Motion for Leave to Appeal to the Court of Appeals	41a
Brief of Petitioner-Appellant	45a
Court of Appeals Remittitur	48a
Motion to Amend Remittitur	50a
Affidavit of John P. Weatherwax in Support of Motion to Amend Remittitur	52a
Court of Appeals Order Denying Motion to Amend Remittitur	57a
Appellate Division Order Adopting Remittitur	58a
Contemporary Newspaper Articles (Photostat)	61a

APPENDIX

Opinion of Court of Appeals

In the Matter

of

DAVID WASSERMANN,

Appellant,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondent.

Decided April 5, 1962.

FOSTER, J. After a formal hearing before a subcommittee of the Medical Committee on Grievances, appellant was found guilty of fraud or deceit in the practice of medicine (Education Law, § 6514, subd. 2, par. [a]) and of unprofessional conduct (Education Law, § 6514, subd. 2, par. [g]). He was charged with submitting false and exaggerated medical reports and bills to an attorney for use in settling personal injury cases. The findings of fact were supported by substantial documentary evidence and testimony and were confirmed by the Medical Committee on Grievances and the Regents' Committee on Discipline. Appellant's license to practice medicine was revoked.

We now are asked to determine whether the acts specified constituted "fraud or deceit *in the practice of medicine*" within the meaning of the Education Law.

It is contended that the Education Law (§ 6514, subd. 2, par. [a]) authorizes suspension or revocation of a license to practice medicine only after a finding, upon due hearing, "That a physician * * * is guilty of fraud or deceit

in the practice of medicine" (italics supplied), and that this record reveals no such fraud in "*the practice of medicine*", as that term is defined in subdivision 4 of section 6501 of the Education Law. The latter section and subdivision provides: "A person practices medicine within the meaning of this article. * * * who holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, and who shall either offer or undertake, by any means or method, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition."

Appellant asserts that this definition, when read in the context of other provisions of the Education Law, limits discipline for fraud or deceit in the practice of medicine to practices of so-called "quacks" and "charlatans" who practice their fraud within the physician-patient relationship directly upon the patient. He argues that at no time did he mistreat a *patient* or deliberately submit a false bill or diagnosis to a *patient*. His "fraud", he claims, was in the realm of the business world, was private in nature, and did not involve his practice of medicine nor cast any doubt upon his behavior or ability insofar as patients were concerned. This argument cannot be accepted.

In the first place, appellant did "hold himself out" as being able to diagnose and treat the conditions of each of the patients involved. In the case of Kaminsky, and possibly of Gonzales, he also "offered" and "undertook" to diagnose their conditions, and this he did fraudulently, insofar as the Transit Authority and insurance company were concerned. In the cases of Mrs. Turner, George Turner, and Sadie Cohen, appellant "offered" to the insurance company to diagnose their conditions and fraudulently submitted his diagnoses to the insurance company without having treated or examined the patients. In all cases, then,

appellant did "hold himself out" *and* did "offer" or "undertake" to diagnose the physical conditions of the patients. Therefore, he was engaged in the practice of medicine when he committed the fraudulent acts (§ 6501, subd. 4, *supra*).

Nothing in the statute limits discipline for fraudulent diagnoses to cases where the fraud is perpetrated directly on the patient. Indeed, insurance companies are frequently the ultimate payers of medical bills in personal injury cases, and in this respect are just as much entitled to true medical reports and bills as are the patients. Appellant's fraudulent scheme, of course, was dependent upon misuse of his medical license, and the submission of false reports and bills to interested persons was an integral part of his medical practice. The preparation of medical reports for various purposes has always been regarded as a necessary part of medical practice, and it makes no difference whether false reports are submitted directly to the patient, attorney, or the insurance company on behalf of the patient. The statute authorizes discipline in any event.

Submissions of false reports of various types to interested persons or institutions other than the patient himself have been found to constitute "fraud or deceit in the practice of medicine" in numerous cases (*Matter of Hutschnecker* v. *Board of Regents*, 269 App. Div. 891, affd. 295 N. Y. 558; *Matter of Siegal* v. *Board of Regents*, 270 App. Div. 783, motion for leave to app. den. 295 N. Y. 993; *Matter of Tompkins* v. *Board of Regents*, 299 N. Y. 469; *Matter of Ray* v. *Board of Regents*, 9 A D 2d 560; *Matter of Mester* v. *Board of Regents*, 259 App. Div. 776).

Appellant argues that these cases establish that the concept of "fraud or deceit in the practice of medicine" may be extended beyond fraud in the physician-patient relationship only in cases involving issuance of fraudulent *required*

reports, or cases involving fraud which affects a vital public interest or interferes with governmental control in an area of public concern. Thus, it is argued, the extension in *Tompkins* (*supra*) was permissible since interference with supervision over traffic in narcotics was involved. However, none of the cases above cited turned on the fact that the false reports were required by law. But, assuming that appellant's argument is a sound one, the fraud on the insurance companies here involved did affect a vital public interest and did affect governmental regulation of insurance companies and their rates. The public also was, or could have been, indirectly affected by fraud against the Transit Authority. Thus fraud or deceit in the practice of medicine was established, and this was sufficient to sustain the action of the board without regard to other statutes or regulations.

In addition, revocation was permissible under the other subdivision involved. Section 6514 (subd. 2, par. [g]) provides that "unprofessional conduct" shall be grounds for discipline. The Regents are given power to promulgate regulations to give effect to that section. That statute was enacted in 1953 (L. 1953, ch. 682, eff. April 13, 1953). Subdivision 4 of section 30 of the Regulations of the Commissioner of Education specifies certain acts constituting "unprofessional conduct" but specifically states that "Unprofessional conduct" "shall * * * not be limited to the following". These regulations were adopted October 28, 1955 and filed January 10, 1956. (N. Y. Off. Comp. of Codes, Rules & Regs. [11th Supp.], pp. 231-232, now 8 NYCRR 60.1, subd. [d].) It is argued that section 6514 (subd. 2, par. [g]) and subdivision 4 of section 30 of the Regulations illegally were applied retroactively here. Assuming that this statute and the regulations were not intended to be

applied retroactively, discipline nevertheless was authorized.

The statute itself authorized discipline for unprofessional conduct, effective April 13, 1953. Appellant's conspiracy to commit unprofessional acts continued past that date, and well into 1956, when the reports involving Morales and Gonzales were issued. Under the statute itself, without resort to the merely explanatory regulations (which do not purport to contain exhaustive definitions of unprofessional conduct), the board was entitled to find that the fraudulent conspiracy involving appellant was "unprofessional". Appellant's participation was malum in se and undoubtedly amounted to "unprofessional conduct" under the standards commonly accepted by physicians in this State (*Matter of Cherry* v. *Board of Regents*, 289 N. Y. 148, 158-161; *Matter of Bell* v. *Board of Regents*, 295 N. Y. 101).

Moreover, the acts were so obviously wrong and violative of the standard of ethics expected of a physician that they constituted "unprofessional conduct" even in the absence of regulations defining the term (*Matter of Bell* v. *Board of Regents, supra*). The conspiracy, though commenced prior to enactment of the statute authorizing discipline for unprofessional conduct, continued over into the post-statutory period, and thus discipline pursuant to its provisions was justified (cf. *People* v. *Hines*, 284 N. Y. 93, 112-114). The conspiracy also carried over into a period subsequent to the filing of the regulations. But the regulations did not "limit" unprofessional conduct to the acts therein defined (this is expressly stated in § 30, subd. 4), and thus the absence in the regulations of a description of the behavior herein condemned does not help appellant.

When the Committee on Grievances rendered their formal findings, determination and recommendation, there was an unfilled vacancy as the result of the death of one

member. Subdivision 1 of section 6515 of the Education Law provides that the committee shall consist of 10 members, and subdivision 4 requires a unanimous vote to find a physician guilty. However, 6 members constitute a quorum (Education Law, § 6515, subd. 9), and here there was a unanimous vote of a committee consisting of more than the required quorum. Such a vote was a unanimous decision (see *Harroun* v. *Brush Elec. Light Co.*, 152 N. Y. 212). We have considered carefully the other issues raised by appellant and find them to be without merit.

The order appealed from should be affirmed, without costs.

Chief Judge DESMOND and Judges DYE, FULD, FROESSEL, VAN VOORHIS and BURKE concur.

Order affirmed.

Opinion of Appellate Division—Third Department

SUPREME COURT

APPELLATE DIVISION—THIRD JUDICIAL DEPARTMENT

Decision handed down March 21, 1961

2945

In the Matter

of

The Application of DR. DAVID WASSERMANN,
Petitioner-Appellant,

For an order pursuant to Article 78 of the Civil Practice Act,

v.

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,
Respondent-Respondent.

This is a proceeding under Article 78 of the Civil Practice Act to review a final determination of The Board of Regents revoking petitioner's license to practice medicine.

Petitioner was charged with fraud or deceit in the practice of medicine in that he submitted to an attorney false medical reports and false bills to assist the attorney in making false claims for personal injuries. Petitioner was also charged with unprofessional conduct in the practice of medicine in that he entered into an illegal conspiracy, scheme and agreement with an attorney whereby false and

fraudulent medical bills and reports were prepared. A sub-committee of the Medical Grievance Committee conducted hearings and has found the petitioner guilty as charged. The Committee on Grievances and the Regents' Committee on Discipline unanimously confirmed the findings of the sub-committee. There is ample evidence in the record to sustain the determination.

Petitioner has been found guilty of very serious charges; and we may not say that the revocation of petitioner's license was an abuse of discretion which warrants interference by this court. The circumstances surrounding this case are very similar to those in *Matter of Shaw* v. *Board of Regents* (— A. D. 2d —) decided herewith.

Petitioner also contends that the findings, determination and recommendation of the Committee on Grievances are void because it was the unanimous decision of only nine members of the Committee whereas Section 6515(1) of the Education Law provides that the Committee shall consist of ten members and subdivision (4) provides for an unanimous vote to find a practitioner guilty. Such a contention is without merit. The record clearly shows that there was an unfilled vacancy on the Committee as the result of the death of a member. Subdivision (9) provides that, "A quorum of the committee shall consist of six members." Here all nine members participating voted that petitioner was guilty of the charges and voted for the recommended discipline. The unanimous vote of a committee consisting of more than a legal quorum is a unanimous decision. (Cf. *Harroun* v. *Brush Electric Light Co.*, 152 N. Y. 212.)

Determination unanimously confirmed, without costs.

Present—Bergan, P. J., Coon, Gibson, Herlihy and Reynolds, JJ.

Vote of Board of Regents

Adopted September 30, 1960

Upon the report of the Regents Committee on Discipline, made in accordance with the provisions of Section 211 of the Education Law, it was

Voted, That the determination of the Medical Committee on Grievances in the matter of the application for the revocation of the license heretofore granted to David Wassermann, New York, to practice medicine in the State of New York as a physician be accepted and sustained; that in compliance with the recommendation of said Committee, medical license No. 34653, issued under date of January 27, 1938, to said David Wassermann permitting him to practice medicine in the State of New York, be revoked, annulled and canceled, and that his registration or registrations as a physician, wherever they may appear, be ordered annulled and canceled of record; and that the Commissioner of Education be empowered and directed to execute, for and on behalf of the Board of Regents, all orders necessary to accept the determination of said Medical Committee on Grievances and to carry out the terms of this vote.

Report of Regents' Committee on Discipline

THE UNIVERSITY OF THE STATE OF NEW YORK

THE STATE EDUCATION DEPARTMENT

IN THE MATTER

of the

Application for the Revocation of the authorization and license heretofore granted to DR. DAVID WASSERMANN to practice as a physician in the State of New York, and for the cancellation of his registration as such, and for such other relief as the premises warrant.

To the Board of Regents:

Your Committee on Discipline reports as follows:

On July 12, 1960, at 2 West 45th Street, New York, New York, a hearing was accorded DAVID WASSERMANN at which he neither appeared in person nor by attorney. Thereafter, Reed B. Dawson, Esq., his attorney, requested that this proceeding be further considered at the next meeting of your Committee. Accordingly, on September 13, 1960, a hearing was granted David Wassermann at which time he appeared in person and by Reed B. Dawson, Esq., his attorney, along with a new attorney, Angelo A. Tumminelli, Esq. Respondent, through his attorney, Reed B. Dawson, Esq., submitted a brief with a request that the matter be so disposed of. John J. Calanese, Esq., Assistant Attorney General, represented the State.

Copies of charges against said David Wassermann, and of the findings, determinations, and recommendation of the Subcommittee of the Medical Committee on Grievances and of the Medical Committee on Grievances are attached hereto and made a part hereof.

Report of Regents' Committee on Discipline

Your Committee has examined the record submitted and has given careful consideration thereto and to the arguments of counsel.

David Wassermann was born on January 13, 1912, and was licensed to practice medicine in the State of New York on January 27, 1938. He is currently registered with this Department.

This disciplinary proceeding was commenced by the verification of a petition on March 1, 1960, and it contains two specifications of charges against the respondent. First, it is alleged that he was guilty of fraud or deceit in the practice of medicine within the meaning of Section 6514, subdivision 2(a) of the Education Law in that he submitted bills for medical services and medical reports which were false and fraudulent to I. Frank Miller, a lawyer, for use by him in connection with a claim of one Louis Kaminsky against the New York City Transit System and, further, that he submitted bills for services and medical reports which were false to the same attorney in connection with claims for personal injuries of George Turner, Doris Turner and Sadie Cohen as well as similar claims in personal injury matters relating to Mario Morales and Julio Gonzalez. Second, it was claimed that the respondent was guilty of unprofessional conduct within the meaning of paragraph (g) of the same section and subdivision of the Education Law in connection with the same facts set forth in the first specification.

A Subcommittee of the Medical Committee on Grievances was appointed to hear the charges against the respondent. A hearing was held on March 23, 1960, at which Dr. Wassermann appeared in person and by his attorney. He testified at length. The Subcommittee has submitted its report stating in detail its factual findings and concluding that the respondent is guilty of the charges contained in both specifications of the petition. It recommends that his license to practice medicine be revoked because he is not

fit to be intrusted with the responsibilities, duties and obligations of a practicing physician to the public. The Medical Committee on Grievances has voted to affirm the findings and recommendation of its Subcommittee.

The testimony and exhibits in evidence amply sustain the charges contained in the petition. Upon the whole record and after due deliberation we sustain the findings of the Medical Committee on Grievances. We hold unanimously that David Wassermann is guilty of fraud or deceit in the practice of medicine within the meaning of Section 6514, subdivision 2(a) of the Education Law and that he is guilty of unprofessional conduct within paragraph (g) of the same section and subdivision of the Education Law. We are of firm conviction that the facts reported herein constitute a case for revocation of authorization and license to practice as a physician heretofore granted to David Wassermann. We therefore recommend that such license be revoked.

Respectfully submitted,

ALEXANDER J. ALLAN, JR.
GEORGE L. HUBBELL, JR.
CHESTER H. LANG
By /s/ ALEXANDER J. ALLAN, JR.
Chairman

Dated September 13, 1960

Report of Regents' Committee

CERTIFICATE OF SECRETARY
DEPARTMENT OF EDUCATION
STATE OF NEW YORK

COMMITTEE ON GRIEVANCES

In the Matter of the Application for the revocation of the authorization and license heretofore granted to

DR. DAVID WASSERMANN

to practice as a physician in the State of New York, and for the cancellation of his registration as such, and for such other relief as the premises warrant.

To the Board of Regents:

I, the undersigned, Secretary of the COMMITTEE ON GRIEVANCES duly appointed pursuant to the Education Law of the State of New York, do hereby certify:

1. That charges, in writing, were duly preferred and filed against DR. DAVID WASSERMANN a duly licensed physician of the State of New York, hereinafter referred to as respondent, wherein respondent was charged with being guilty of fraud or deceit in the practice of medicine and with being guilty of unprofessional conduct in the practice of medicine within the purview of Section 6514, subdivision 2(a) and 6514, subdivision 2(g) of the said Education Law, and a copy of the said charges with notice of hearing were duly served upon the respondent, and hearing duly had thereon before a subcommittee of the COMMITTEE ON GRIEVANCES which found DR. DAVID WASSERMANN guilty of the charges as set forth in its written report containing its

findings, determination and recommendation as presented and filed with the COMMITTEE ON GRIEVANCES.

2. That the findings, determination and recommendation of the said subcommittee on the aforesaid charges against DR. DAVID WASSERMANN, the respondent herein, were made the findings, determination and recommendation of the COMMITTEE ON GRIEVANCES on May 5, 1960 except as may be hereinafter modified, if any, which unanimously determined that the respondent was guilty of the charges to the extent above found.

3. That it recommended to the Department of Education that for respondent's misconduct as hereinbefore found, his license be revoked and that the entire record of the proceedings herein be duly certified by the Secretary, and transmitted to the Board of Regents.

I FURTHER CERTIFY THAT the vote of the COMMITTEE ON GRIEVANCES on the said report containing the findings, determination and recommendation as to the charges against: DR. DAVID WASSERMANN was as follows and the vote was so recorded:

RECORD OF VOTE

Member	Recommendation	Vote
DR. C. GORHAM BECKWITH	Revocation	Guilty
DR. HENRY W. EISFELDER	"	"
DR. HERBERT E. WELLS	"	"
DR. JAMES C. POTTER	"	"
DR. LAWRENCE AMES	"	"
DR. WILLIAM T. BOLAND	"	"
DR. IRVING L. ERSHLER	"	"
DR. WILLIAM L. WHEELER, JR.	"	"
DR. ALFRED A. SCHENONE	"	"
DR. HENRY E. MCGARVEY (Died November 8, 1959—vacancy caused by such death unfilled as of the time of this meeting.)		

Report of Regents' Committee

I FURTHER CERTIFY that annexed hereto is a true copy of the record and proceedings taken herein, as follows:

1. Transcript of the Minutes
2. Report, Findings and Recommendation of the sub-committee
3. Exhibits

All of which is respectfully and unanimously submitted.

Dated: 5th day of May, 1960.

(sgd.) DR. LAWRENCE AMES,
Secretary.

CONCLUSION

We find that the charges against the respondent, as above set forth, have been sustained by sufficient legal evidence. We accordingly recommend that the respondent's license to practice medicine in the State of New York be revoked.

Dated: New York, New York
5 day of May, 1960.

.....
Dr. William T. Boland, Chairman

.....
Dr. C. Gorham Beckwith

.....
Dr. Alfred A. Schenone

Report of Findings, Determination and Recommendation of Sub-Committee on Grievances

DEPARTMENT OF EDUCATION
STATE OF NEW YORK

COMMITTEE ON GRIEVANCES

In the Matter of the Application for the Revocation of the authorization and license heretofore granted to

DR. DAVID WASSERMANN

to practice as a physician in the State of New York, and for the cancellation of his registration as such, and for such other relief as the premises warrant.

To the Committee on Grievances

The undersigned, subcommittee of the COMMITTEE ON GRIEVANCES duly designated to hear the charges against DR. DAVID WASSERMANN hereinafter referred to as Respondent, pursuant to Section 6515 of the Education Law of the State of New York, and to report its findings, determination and recommendation in respect to the said charges, do hereby, after due deliberation, unanimously report its findings, determination and recommendation as provided by law, as follows:

RECORD OF PROCEEDINGS

Petition containing charges verified: March 1, 1960
Notice of hearing upon charges returnable: March 23, 1960
Place of hearing: 2 West 45th Street (16th floor), New York City, New York

Report of Findings, Determination and Recommendation of Sub-Committee on Grievances

Respondent served with copy of notice of hearing and charges: March 1, 1960

Answer of respondent verified and filed: March 17, 1960 March 18, 1960

Petitioner appears by Louis J. Lefkowitz, Attorney General of the State of New York by Meyer H. Mencher, Assistant Attorney General

Respondent appears in person and by his attorney: Reed B. Dawson, Esq. 355 Lexington Avenue, New York 17, New York

Respondent's present address: 285 West End Avenue, New York City, New York

Hearing held on: March 23, 1960

FINDINGS OF SUBCOMMITTEE

1. The caption of the papers in these proceedings spell the name of the respondent as "Dayid Wasserman" with only one "n". When the respondent took the stand he spelled his name "Wassermann" with two "n's". We are advised that Reed B. Dawson, Esq., attorney for the respondent, has advised the Attorney General that respondent's name is spelled with two "n's." It further appears that when the respondent last registered he spelled his name with two "n's."

2. Dr. David Wassermann, the respondent herein, was graduated from the University of Illinois in 1937 and thereafter and on or about January 27, 1938 he received license No. 34653 from the New York State Department of Education which authorized him to practice medicine in the State of New York.

3. Respondent is currently registered to practice medicine in the State of New York with the New York State

Education Department from premises at 285 West End Avenue, in the Borough of Manhattan, County, City and State of New York.

4. Respondent was charged in these proceedings with fraud or deceit in the practice of medicine in that he issued false and fraudulent bills and medical reports; and with unprofessional conduct in the practice of medicine in that he had entered into an agreement with an attorney under which the attorney would refer patients to the respondent and the respondent would issue false and fraudulent bills and medical reports for such patients for the purpose of enhancing their claims for damages based upon the injuries referred to in said bills and reports.

From the evidence before us and from the admissions made by the respondent it appears that the respondent had issued medical bills and reports for; one Louis Kaminsky reciting ninety-one visits including ten spinal taps and X-rays for a total bill of $1,310; Doris Turner reciting a total of nineteen office visits and four house calls including X-rays for a total bill of $185; George Turner reciting nineteen office visits, four house calls and X-rays for a total bill of $195; Sadie Cohen reciting thirty-nine visits including three spinal taps and X-rays for a total bill of $530; Mario Morales reciting X-rays, house calls and office visits for a total bill of $202; and Julio Gonzalez reciting X-rays, house calls and office visits for a total bill of $141.

Louis Kaminsky testified that he had visited the respondent at his office definitely one time and not more than four times. He further testified that respondent had not taken any X-rays and that his entire examination consisted of feeling a lump on the witness' forehead above his left eye and that he had not paid any monies whatsoever to the respondent. Respondent admitted that he had only seen Kaminsky a few times and that he had never received the sum of $1,310 in payment for his bill although the bill re-

cited that he had been paid that sum by the patient. Doris Turner testified that she did not know the respondent, had never seen him; that he had never made a house call to her home to herself or her husband on the date set forth in the bill and had never visited his office in New York; and had never been treated by the respondent. She further testified that she had never been X-rayed prior to the year 1956. She further testified that her mother had never been visited by the respondent thirty-nine times as recited in the bill issued by him and that neither she, her husband nor her mother had suffered from the injuries recited in the medical report issued by the respondent. The respondent testified that he had made one or two house calls to Mr. and Mrs. Turner and Mrs. Cohen. Mario Morales testified that he had visited a doctor on West End Avenue but could not recognize the respondent as being the doctor whom he had visited. He testified that he had seen this doctor three or four times, and had not sustained any marks on his face or cuts on his arms as recited in the medical report furnished by the respondent. He further testified that Julio Gonzalez had been involved in the same accident with him and that there were no marks on Mr. Gonzalez' face as a result of the accident as recited in respondent's medical report. Each of the medical reports and bills hereinbefore referred to had been sent to the insurance companies respectively involved either directly by I. Frank Miller, the attorney retained by these patients who had referred the patients to the respondent, or directly by the respondent.

In an attempt to explain his actions the respondent testified that beginning in approximately 1952 he had arranged with the attorney I. Frank Miller to send patients to him who had been involved in accidents; that he would examine the patients and submit bills and medical reports to the attorney. He further testified that the attorney had agreed, due to the fact that the respondent had no secre-

tarial help available, to type the medical reports and bills for him and that he, the respondent, had furnished to the attorney blank sheets of his stationery and letterheads. He stated that he had known the attorney for approximately twenty-five years and had relied upon the attorney's honesty and integrity and that when the attorney would come to him late in the evening at about 10:30 or 11:00 o'clock while he was having his dinner he would sign the papers the attorney submitted to him without checking the correctness of the facts contained therein. He stated that his records were kept at the office and not at his home, and, therefore, could not make an accurate check of the contents of the bills against his records. He further stated that when the attorney would submit these papers to him they would be partially covered so that he would not see the total contents of the documents.

An examination of the evidence before us shows that the respondent had signed each of the bills and reports in evidence immediately below the last line and specifically one of the bills issued by the respondent for Louis Kaminsky was signed by him at the very bottom of the page. Approximately one-half inch above his signature appear the words "THIRTEEN HUNDRED AND TEN DOLLARS." The other bill in the Kaminsky case was also signed by the respondent not more than one inch below the figures "$1,310.00." It is inconceivable that the respondent did not see these totals as well as the totals shown on the other bills in evidence at the time he signed them and we, therefore, cannot accept his explanation with regard thereto.

The record before us further indicates that the respondent had entered into a course of dealing with the attorney I. Frank Miller in 1951 which continued through 1957. During that period of time the respondent had issued medical bills and reports in not less than thirty-one cases for patients who had been referred to him by the attorney and that the medical bills and reports were prepared by the attorney

and signed by the respondent in the same manner as the bills and reports in evidence. It is apparent that this course of dealing and manner of doing business arose out of and was in furtherance of an agreement between respondent and the attorney whereby the attorney would refer his clients to the respondent and that the respondent would issue false and fraudulent medical bills and reports for the purpose of enhancing said clients' claims for compensation arising out of the injuries for which the respondent allegedly had rendered treatment. We feel that such conduct cannot be condoned and that the issuance of the false and fraudulent bills and medical reports by the respondent, epecially in the manner in which it was done, evinced a complete disregard by the respondent of his duties and obligations as a physician and constitutes the fraudulent practice of medicine and unprofessional conduct.

On the entire record we, therefore, conclude that the respondent is guilty of fraud or deceit in the practice of medicine within the purview and meaning of Section 6514, subdivision 2(a) of the Education Law of the State of New York; and is guilty of unprofessional conduct in the practice of medicine within the purview and meaning of Section 6514, subdivision 2(g) of the Education Law of the State of New York.

5. In considering the measure of discipline to be recommended in this case we have taken into consideration the character testimony in the form of letters submitted by the respondent. In view of the gravity of the charges against the respondent and the proof adduced in support thereof, we feel that the respondent is not fit to be entrusted with the responsibilities, duties and obligations of a practicing physician to the public.

Laws Involved

CONSTITUTION OF THE UNITED STATES

U. S. C. A. CONST. AMEND. 14, SEC. 1, PP. 3-4

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

• • •

NEW YORK STATE EDUCATION LAW

Section 211—16 McKinney Laws, Pt. 1, p. 71.

"§ 211. SUPERVISION OF PROFESSIONS.

1. Conformably to law the regents may supervise the entrance regulations to and the licensing under and the practicing of the professions of medicine, dentistry, nursing, veterinary medicine, pharmacy, optometry and podiatry, and also supervise the certification of public accountants, shorthand reporters, architects, engineers, surveyors and members of any other profession which may hereafter come under the supervision of the board of regents. Hearings by the regents under disciplinary proceedings pursuant to the provisions of this chapter relating to such professions may be given by or before not less than three members of the regents or by three persons, one of whom may be a member of the regents who shall serve without compensation, in each case to be designated by the regents or by the chancellor of the university to hold such hearings, but any

decision or determination in such proceedings shall be made by the regents. Hearings shall be upon the record before the grievance committee, or before the board of examiners of those professions wherein no grievance committee is specifically provided by law. The regents' committees conducting such hearings shall render a written report to the regents, including a statement as to the findings of fact and the evidence together with their recommendations, and the regents, without further hearing, shall in their discretion execute an order accepting or changing the determination of the grievance committee or board of examiners. The regents may in their discretion suspend the execution of a determination of censure and reprimand or suspension or revocation of the license of a practitioner and place such practitioner on probation subject to his compliance with conditions which the regents may determine. Members of the regents' committee shall be entitled to receive their necessary travel expenses together with fifty dollars per day for each day actually spent in conducting such hearings. As amended L. 1956, c. 225; L. 1958, c. 180, eff. March 13, 1958."

* * *

Section 6501—16 McKinney Laws, Pt. 3, p. 90.

"Section 6501. DEFINITIONS.

* * *

4. The practice of medicine is defined as follows: A person practices medicine within the meaning of this article, except as hereinafter stated, who holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, and who shall either offer or undertake, by any means or method, to diagnose, treat, operate or prescribe for

any human disease, pain, injury, deformity or physical condition."

• • •

Section 6514—16 McKinney Laws, Pt. 3, p. 128.

"Section 6514. REVOCATION OF CERTIFICATES; ANNULMENT OF REGISTRATIONS.

• • •

2. The license or registration of a practitioner of medicine, osteopathy or physiotherapy may be revoked, suspended or annulled or such practitioner reprimanded or disciplined in accordance with the provisions and procedure of this article upon decision after due hearing in any of the following cases:

(a) That a physician, osteopath, or physiotherapist is guilty of fraud or deceit in the practice of medicine, osteopathy or physiotherapy • • •

• • •

(g) That a physician is or has been guilty of unprofessional conduct. The regents shall have power to promulgate rules to give effect to this section.

• • •"

Section 6515—16 McKinney Laws, Pt. 3, p. 137.

"Section 6515. (NOTE: As it provided at time of hearing of charges against petitioner in 1960.) PROCEDURE IN DISCIPLINARY PROCEEDINGS AGAINST A PHYSICIAN OR OSTEOPATH.

1. The committee on grievances shall be continued. Such committee shall consist of ten members who shall be appointed by the regents. The term of office of each of such members of such committee shall be five years. The terms of office of two

members shall expire each year. In the case of vacancy at any time by resignation, death or otherwise in the membership of the committee, such vacancy shall be filled for the unexpired term in the same manner as provided for the original selection of such member.

2. Any duly incorporated state medical or osteopathic society having two hundred or more members may nominate candidates for members of such committee, not to exceed three nominations for each member of such committee to which such society shall be entitled hereunder. When the candidates are so nominated the regents shall appoint for the terms specified herein as they shall determine, such members of such committee, so that such committee shall consist of four members who have been duly nominated by the Medical Society of the State of New York, two members by the New York State Homeopathic Society, one member by the New York State Osteopathic Society, and the regents upon their own nomination shall appoint three members of conspicuous professional standing. Each member of such committee shall be a duly licensed physician of this state.

3. The members of such committee shall serve during their appointed terms and until their successors are designated by the regents. They shall meet annually during the month of January for the purpose of organizing by the election of a chairman and a secretary of the committee, and shall meet at such times as the chairman shall designate.

4. The members of such committee shall have jurisdiction to hear all charges against duly licensed physicians, osteopaths and physiotherapists of this

state for violation of the provisions of section sixty-five hundred fourteen hereof, except subdivision one, and upon such hearing such committee shall determine such charges upon their merits, and the department may, after due notice and hearing, upon the receipt from such committee of the record, findings and determination of such committee wherein and whereby such practitioner has been found guilty, revoke and annul his license, annul his registration, suspend him from practice, or reprimand or otherwise discipline him. Proceedings against any practitioner under this section shall be begun by filing a written charge or charges against the accused. Such charges may be preferred by any person, corporation or public officer, and they shall be filed with the secretary of the committee on grievances and such secretary shall forward to the executive officer of the department a copy of such charges in all cases in which such committee or a subcommittee thereof shall deem a trial necessary. The chairman of such committee, when charges are preferred, may designate three or more of the members of such committee, including, whenever possible, at least one member who represents the same school of practice as the physician, osteopath or physiotherapist, against whom the charges are preferred to hear and report upon such charges to such committee. The time and place of the hearing of such charges shall be fixed by the secretary of the committee as soon as convenient and a copy of the charges, together with a notice of the time and place when they will be heard shall be served upon the accused or his counsel at least ten days before the date actually fixed for such hearing. Where personal service or service upon counsel after due diligence

cannot be effected and such fact is certified on oath by any person duly authorized to make legal service, the secretary of the committee shall cause to be published for four times at least thirty days prior to the hearing, a notice of the hearing in a newspaper published in the county in which the physician, osteopath or physiotherapist was last known to practice, and a copy of such notice shall also be mailed to the accused at his last known address. All such notices of hearing of charges shall contain a plain and concise statement of the material facts without unnecessary repetition, but not the evidence by which the charges are to be proved with a notification that a stenographic record of such proceedings will be kept, and that the accused will have opportunity to appear either personally or by counsel at the hearing, with the right to produce witnesses and evidence upon his own behalf, to cross-examine such witnesses, to examine such evidence as may be produced against him and to have subpoenas issued by the committee. Such subcommittee to whom such charges were referred shall make a written report of findings and recommendations and the same shall be forthwith transmitted to the secretary of the committee on grievances, with a transcript of the evidence. Said grievance committee may thereupon act upon such recommendation as it shall deem fit, or may take further testimony if the same shall seem desirable in the interest of justice. Thereupon the committee shall determine such charges upon their merits (the vote of each member of such committee to be recorded as part of the committee's findings). If by unanimous vote the practitioner is found guilty of such charges or any of them, the committee shall transmit to the department the record, findings and determination wherein and whereby such

practitioner has been found guilty, and their recommendation, and the regents after due hearing shall in their discretion execute an order accepting or modifying such determination of the committee as hereinabove provided. If the practitioner is found not guilty, the committee shall order a dismissal of the charges, and the exoneration of the accused.

Nothing herein contained shall estop the department from initiating proceedings in any case.

5. Any licensed practitioner found guilty under the provisions of this section, or whose license is otherwise revoked or suspended or registration annulled, or who has been refused registration, or who is otherwise reprimanded or disciplined under this article may institute a proceeding under article seventy-eight[1] of the civil practice act for the purpose of reviewing such determination returnable before the appellate division of the third judicial department, but no such determination shall be stayed or enjoined except upon application to such appellate division, after notice to the attorney-general. The committee on grievances or any member thereof may issue subpoenas and administer oaths pursuant to section sixty-one of the public officers law in connection with any hearing or investigation under this article and it shall be the duty of such committee to issue subpoenas at the request of and upon behalf of the defense. The committee on grievances shall not be bound by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain the same. The department shall furnish legal advice and assistance to the committee whenever such service is requested.

* * *

9. Should, for any reason, three or more members of the committee be disqualified from participating in the hearing and decision of any case, or be for other reason

unable to participate therein their places may be temporarily filled for the purpose of determining the case to be heard by the remaining members of the committee nominating twice the number of candidates for such vacancy from whom there shall be selected by the chairman of the committee, after notice to the respective parties, the necessary number of members to constitute a quorum. A quorum of the committee shall consist of six members.

10. Such committee shall have power to make such rules and regulations for the conduct of its business as it shall deem necessary, provided such rules and regulations do not conflict with any of the provisions of this article.

11. The committee shall have power, where a proceeding has been dismissed, either on the merits or otherwise, to relieve the accused from any possible odium that may attach by reason of the making of charges against him, by such public exoneration as it shall see fit to make if requested by the accused so to do. As amended L. 1953, c. 249, eff. March 26, 1953."

Appellate Division Order Denying Leave to Appeal

At a Term of the Appellate Division, Supreme Court, State of New York, Third Judicial Department, held at the County Court House in the City of Albany, New York, commencing on the 13th day of November, 1961.

Present:

Hon. Francis Bergan,
Presiding Justice.

Hon. William H. Coon,
Hon. James Gibson,
Hon. J. Clarence Herlihy,
Hon. Donald S. Taylor,
Associate Justices.

Order No. 2945

In the Matter of the Application

of

Dr. David Wassermann,
Petitioner-Appellant,

For an Order pursuant to Article 78 of the Civil Practice Act,

against

The Board of Regents of the University of the State of New York,
Respondent.

The above-named petitioner having served and filed his notice of motion upon the annexed affidavit of Arnold

Ostwald, verified the 28th day of September, 1961, seeking leave to appeal to the Court of Appeals from an order of this Court, entered the 10th day of July, 1961, and served the 15th day of September, 1961, and petitioner having submitted a brief in support of such motion; and the respondent having duly served and filed an affidavit of Robert W. Bush, Assistant Attorney General of the State of New York, in opposition to the motion, and a letter of Robert W. Bush, dated October 13, 1961, having been filed with the Court; and the issues raised having come on for disposition before this Court, and due deliberation having been had thereon, and the Court having rendered its unanimous memorandum decision on or about the 16th day of November, 1961, denying permission to appeal to the Court of Appeals, without costs.

Now, on motion of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for respondent, it is

ORDERED, that permission to appeal to the Court of Appeals be and the same is hereby unanimously denied, without costs.

/s/ JOHN J. O'BRIEN,
Clerk.

A TRUE COPY

ENTERED: December 6, 1961.
/s/ JOHN J. O'BRIEN,
Clerk.

Motion for Leave to Appeal to Court of Appeals

COURT OF APPEALS

STATE OF NEW YORK

In the Matter of the Application

of

DR. DAVID WASSERMANN,

Petitioner-Appellant,

For an Order pursuant to Article 78 of the Civil Practice Act,

against

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondent-Respondent.

ORDER TO SHOW CAUSE

Upon the annexed affidavit of Arnold Ostwald, sworn to December 19, 1961, the annexed order of the Supreme Court, Appellate Division, Third Department, entered December 14, 1961, with notice of entry thereof, denying the petitioner-appellant's motion for leave to appeal to the Court of Appeals, the order of the Appellate Division, Third Department, entered July 10, 1961, with notice of entry thereof, and upon all the proceedings heretofore had herein, it is

ORDERED, that the respondent-respondent show cause at a Term of the Court of Appeals of the State of New York to be held at the Courthouse, Albany, New York, on the 8th day of January, 1962, at 2:00 o'clock in the afternoon, or as soon thereafter as counsel can be heard, why an order should not be made granting leave to appeal to the Court

of Appeals from the aforesaid order of the Appellate Division, Third Department, entered July 10, 1961, on the ground that there are questions of law in this proceeding which ought to be passed on by the Court of Appeals, as more fully set forth in the annexed affidavit and in the brief to be submitted therewith on behalf of the petitioner-appellant, and on the further ground that the interests of substantial justice require the granting of leave to appeal, and why the respondent-respondent should not be stayed from proceeding under the said order of the Appellate Division, Third Department, entered on July 10, 1961, pending the hearing and determination by this Court of the aforesaid motion by the petitioner-appellant for leave to appeal from the said order, and in the event the said motion is granted, pending the hearing and determination by this Court of the appeal, and why such other and further relief should not be granted as to this Court may seem just and proper, and it is further

ORDERED, that the respondent-respondent be and they hereby are stayed from all proceedings under the said order of the Appellate Division, Third Department, entered July 10, 1961, until the hearing and determination of this application for a stay.

Sufficient reason appearing therefor, it is further

ORDERED, that service of a copy of this order together with the papers upon which it is granted made upon the Attorney General of the State of New York, attorney for the respondent-respondent, prior to 5:00 P.M. on the 21st day of December, 1961, shall be sufficient service thereof.

Dated: New York, New York, December 20, 1961.

STANLEY H. FULD,
Judge of the Court of Appeals
of the State of New York.

Affidavit of Arnold Ostwald in Support of Motion for Leave to Appeal

COURT OF APPEALS

STATE OF NEW YORK

In the Matter of the Application

of

DR. DAVID WASSERMANN,

Petitioner-Appellant,

For an Order pursuant to Article 78 of the Civil Practice Act,

against

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondent-Respondent.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ARNOLD OSTWALD, being duly sworn, deposes and says:

1. I am an attorney at law and the attorney for the above named petitioner-appellant on this motion for leave to appeal to the Court of Appeals from an order entered in the office of the Clerk of the Supreme Court, Appellate Division, Third Department, on July 10, 1961, which order unanimously confirms the final determination of the Board of Regents revoking the petitioner-appellant's license to practice medicine in the State of New York.

Affidavit of Arnold Ostwald

2. This is a proceeding under Article 78 of the Civil Practice Act and Section 6515 of the Education Law brought by the petitioner-appellant to review a final determination of the Board of Regents of the State of New York made on or about September 30, 1960, and the order of Ewald B. Nyquist, Acting Commissioner of Education of the State of New York, entered thereon on October 31, 1960, in which it was ordered that the petitioner-appellant's license to practice medicine in the State of New York be revoked and that his registration as a physician be canceled of record. The Appellate Division of the Supreme Court, Third Department, unanimously upheld the said final determination and order in a decision handed down March 21, 1961. The order of the Appellate Division, Third Department, to be appealed from was entered thereon in the office of the Clerk of that Court on July 10, 1961, and was served upon the then attorney for the petitioner-appellant on September 18, 1961. Copies of the said decision and order with notice of entry are annexed to and made part of this affidavit. The petitioner-appellant's motion in the Appellate Division, Third Department, for leave to appeal from the said order entered July 10, 1961 was denied in a decision handed down November 16, 1961 and an order entered thereon December 14, 1961. A copy of the said order of the Appellate Division, Third Department, denying leave to appeal to the Court of Appeals with notice of entry was served upon the attorney for the petitioner-appellant on December 18, 1961 and is annexed hereto.

3. The petitioner-appellant was charged with fraud or deceit in the practice of medicine under Section 6514, subdivision 2(a) of the Education Law, in that he submitted to an attorney false medical reports and false bills to assist the attorney in making false claims for personal injuries. Petitioner-appellant was also charged with unprofessional conduct in the practice of medicine under Section 6514,

subdivision 2(g) of the Education Law in that he conspired with the same attorney to make the same said false medical reports. A subcommittee of the Medical Grievance Committee conducted hearings and found the petitioner-appellant guilty of both charges. The Committee on Grievances and the Regents' Committee on Discipline unanimously confirmed the findings of the sub-committee, and the petitioner-appellant's license to practice medicine was revoked. A stay of the revocation was in effect during the pendency of this proceeding in the Appellate Division, Third Department, and during the pendency in the said court of the petitioner-appellant's motion for leave to appeal to the Court of Appeals. The petitioner-appellant now seeks a further stay during the pendency in the Court of Appeals of this motion for leave to appeal and, if this motion is granted, during the pendency of the appeal.

4. The petitioner-appellant has previously contended before the Appellate Division that the findings and determination of the Committee on Grievances were not justified by the evidence adduced at the hearing and that the Committee's recommendation for revocation was not justified under the circumstances. The Appellate Division held, however, that there was ample evidence in the record to sustain the determination and that the severe penalty imposed upon the petitioner-appellant did not constitute an abuse of discretion. For the purposes of this appeal the petitioner-appellant accepts the holdings of the Appellate Division, but he respectfully asks this Court to focus its attention upon the question of the applicability of Education Law, Section 6514, subdivisions 2(a) and 2(g) to a physician who has made false medical reports for use by a lawyer in the settlement of personal injury claims. While the opinion of the Appellate Division deals only with the questions of fact, the petitioner-appellant seeks this Court's leave to

appeal so that the Court of Appeals may primarily consider the following points of law:

I. A physician who makes false medical reports for use by a lawyer in connection with personal injury claims is not then engaged "in the practice of medicine" within the applicable definition contained in Section 6501, subdivision 4 of the Education Law. A physician who so misconducts himself cannot, therefore, be disciplined for having been guilty of fraud or deceit in the practice of medicine under Section 6514, subdivision 2(a). Such misconduct is committed outside the practice of medicine, as defined in the statute, or, at most, it is peripheral or ancillary thereto.

II. The catch-all "unprofessional conduct" provisions of subdivision 2(g) also cannot be used to discipline a physician for having made false medical reports to a lawyer in connection with personal injury claims:

(a) To do so would unlawfully enlarge the cause for disciplinary action specifically provided by subdivision 2(a) so as to extend it to fraud or deceit other than in the practice of medicine.

(b) The term "unprofessional conduct" as used in subdivision 2(g) is of general import and of uncertain meaning. Under the doctrines of *noscitur a sociis* and *ejusdem generis* this term must therefore be confined to the specific subject matters set forth in the other subdivisions of Section 6514 as grounds for disciplinary action.

(c) The Department of Education Regulations defining unprofessional conduct (Section 30, subdivision 4) also do not include the making of false medical reports for use by a lawyer in personal

injury claims among the acts of misconduct for which a physician may be disciplined under Section 6514. Subdivision 4(i) of these regulations declares that a physician who makes false *required* reports is guilty of unprofessional conduct and thus specifically excludes the voluntary making of false *non-required* reports such as those with which the petitioner-appellant is charged from the scope of disciplinary power under the rule of *expressio unius est exclusio alterius.*

(d) The Legislature has enumerated specific causes for disciplinary action in subdivision 1 and subdivisions 2(a) through (f) of Section 6514. The Department of Education has enumerated additional specific causes by defining unprofessional conduct in its Regulations, Section 30, subdivisions (a) through (k). To permit the Board of Regents to create additional unenumerated causes for disciplinary action under the catch-all "unprofessional conduct" provision would render all of the specific enumerated causes in the statute and in the Regulations entirely meaningless.

III. Not every act of misconduct on the part of a physician may be made the subject of disciplinary action by the Board of Regents in the first instance under the powers delegated to it by Section 6514. Misconduct other than directly in the practice of medicine and other than expressly specified in the Staute or in the Regulations may in the first instance be made the subject of criminal prosecution and, if a conviction is obtained, the physician may then be disciplined under the provisions of subdivisions 1 and 2(b) of Section 6514.

5. While the Appellate Division did not specifically address itself to any of these questions of the statutory authority for disciplinary action against the petitioner-appellant, a finding of the existence of such statutory authority is necessarily implicit in its decision.

6. As will be shown in the brief, the petitioner-appellant's foregoing points of law raise important issues concerning the construction of the legislative provisions for disciplinary action against physicians. These points have not previously been decided by the Court of Appeals. Upon information and belief, the revocation of a physician's license for unprofessional conduct under subdivision 2(g) has never been previously reviewed in the courts and this subdivision has not previously been interpreted by the Court of Appeals. The courts have never applied or interpreted the definition of the practice of medicine contained in Section 6501, subdivision 4, in any disciplinary proceeding.

7. The charges against the petitioner-appellant arose out of the so-called Arkwright or Brooklyn ambulance chasing investigation. Upon information and belief, the petitioner-appellant is one of at least seventeen physicians who have been disciplined on similar charges arising out of the same investigation. Upon information and belief, disciplinary proceedings against a great many other physicians are presently pending on like charges of having made false medical reports for use by lawyers in connection with personal injury claims. The petitioner-appellant is the first to seek the ruling of the Court of Appeals on the applicability of Education Law, Section 6514, subdivisions 2(a) and 2(g) and the regulations promulgated thereunder to the making of false medical reports in connection with personal injury claims. The questions presented on this motion for a full review by the Court of Appeals are therefore

not only distinguished by their absolute novelty but also by the grave importance to the matters at issue. The petitioner-appellant has been permanently deprived of his livelihood and of his profession and a great many other physicians have suffered like or similar severe punishment through administrative action taken on alleged statutory authority which has never been interpreted by the Court of Appeals.

8. In support of the petitioner-appellant's application for a further stay of the order revoking his license to practice medicine during the pendency of this motion and, if the same is granted, during the pendency of this appeal, it is respectfully urged that the petitioner-appellant is not charged with any misconduct affecting any patient, that he has had an exemplary and unblemished record in his professional relations with his patients, that he has never previously been charged with any misconduct, that a like stay has been in effect during the pendency of the proceedings in the Appellate Division and, finally, that the denial of such a stay would cause the petitioner-appellant to suffer irreparable injury in the event this motion is granted or in the event the order sought to be stayed is reversed on appeal.

9. No previous application for leave to appeal to the Court of Appeals has been made, except as hereinabove set forth.

ARNOLD OSTWALD.

Sworn to before me this
19th day of December, 1961.

ISRAEL LEFRAK, Notary Public, State of New York,
No. 24-2297200
Qual. in Kings Co.
Commission Expires March 30, 1963

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

COURT OF APPEALS

STATE OF NEW YORK

In the Matter of the Application

of

DR. DAVID WASSERMANN,
Petitioner-Appellant,

For an Order pursuant to Article 78 of the Civil Practice Act,

against

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,
Respondent-Respondent.

* * *

In essence, Dr. Wassermann's position is that he has been permanently deprived of his profession and of his livelihood without the protection of ordinary constitutional safeguards under statutes and regulations delegating the power of such drastic administrative action to the Department of Education, even though these statutes and regulations, on their face, do not extend to and plainly exclude from their scope the acts of misconduct with which he is charged.

* * *

A plenary review of this case by the Court of Appeals is necessary not only so that this Court may rule on the important and altogether novel questions of law outlined above, but also because of the grave consequences of the

Department of Education's action. Dr. Wassermann has been deprived of his profession and of his livelihood without the protection of the rules of evidence and of ordinary constitutional safeguards * * *

* * *

The Question Presented

Should the power of the Department of Education to discipline physicians *without the protection of ordinary constitutional safeguards* delegated to it by statute be extended to permit a physician to be deprived of his profession and of his livelihood for alleged acts of misconduct which are outside the scope of such statutory delegation and which are not included among the definitions of "unprofessional conduct" contained in the Department's own regulations? (italics supplied)

* * *

Point III of this brief will set forth and discuss the statutory provisions under which administrative disciplinary action may be taken against a physician who is charged with the acts of misconduct which are involved in this case and under which Dr. Wassermann can be disciplined without the denial of due process of law if sufficient evidence against him is presented. * * *

* * *

Brief in Support of Motion for Leave to Appeal to the Court of Appeals

POINT I

The revocation of Dr. Wassermann's license for fraud or deceit in the practice of medicine under Education Law, Section 6514, subdivision 2(a), constitutes an unlawful extension of disciplinary power, because the making of false medical reports and the supplying of false bills to assist an attorney in the disposition of personal injury claims are acts not done in the practice of medicine within the definition of Section 6501, subdivision 4.

* * *

POINT II

The revocation of Dr. Wassermann's license for unprofessional conduct under Education Law, Section 6514, subdivision 2(g) constitutes an unlawful extension of disciplinary power, * * *

* * * The charge that Dr. Wassermann is guilty of unprofessional conduct is therefore also insufficient in law. The revocation of his license on this ground also constitutes an unlawful extension of the disciplinary powers delegated to the Department of Education.

* * *

The Department of Education is not authorized to take away a physician's license on grounds of alleged misconduct which are not set out in the specifications of disciplinary grounds contained in Section 6514, subdivisions 2(a) through (g) * * *

* * *

Even if the Department of Education had included acts of fraud or deceit not in the practice of medicine among its regulatory definitions of unprofessional conduct, such inclusion would have been an unlawful enlargement of the power to discipline physicians for fraud or deceit in the

practice of medicine specifically delegated in Section 6514, subdivision 2(a). * * *

* * *

* * * The respondent further prejudiced Dr. Wassermann's case by arguing falsely that he could have typewritten the medical reports in question, since a document (Exhibit D), allegedly typewritten by him, was in the record. In fact this document had been written out by Dr. Wassermann in longhand, as the respondent finally admitted after the argument before the Appellate Division in his letter of February 10, 1961.

* * *

* * * The legislature may enlarge the disciplinary powers of the Department of Education by amending Section 6514 so as to empower it to hear and determine also charges of misconduct committed not in the practice of medicine, but since this has not yet been done, the action taken against Dr. Wassermann constitutes an unlawful extension of the powers of the Department of Education.

* * *

The protection of Dr. Wassermann's most valuable property, the right to practice his profession, to which he is entitled under the Federal and State Constitutions, demands that he be not deprived of it without due process of law and that the Department of Education's powers to take it away without affording him the ordinary constitutional safeguards be strictly construed and be limited to the express delegation contained in the statute.

* * *

BRIEF OF PETITIONER-APPELLANT

COURT OF APPEALS

STATE OF NEW YORK

In the Matter of the Application

of

DR. DAVID WASSERMANN,
Petitioner-Appellant,

For an Order pursuant to Article 78 of the Civil Practice Act,

against

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,
Respondent-Respondent.

* * *

POINT II

The Regents' Retroactive Application of Education Law, Section 6514, subdivision 2(g) and the regulations was improper, and vitiates their determination.

* * *

POINT III

The procedure provided by Education Law, Section 6515, was not complied with in that the committee on grievances did not, at the time of the finding of guilt, consist of ten members, and was, therefore, not legally constituted.

* * *

POINT IV

The determination under review violates appellant's rights under the Federal Constitution.

1. The proceedings herein were bottomed on an act which was unconstitutional.

(a) The act was unconstitutional by reason of the fact that it delegated legislative power or function to an administrative agency.

See: *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, 55 S. Ct. 837 (1935), 1st paragraph, second column on page 846.

(b) The act was unconstitutional in that it failed to establish definite, precise and standard conduct or to define the nature, extent and the manner of interpretation thereof. Particularly, there is no understandable expression as to which acts, and the nature thereof, that are contemplated, are prohibited by the act in question.

See: *Larkin* v. *Consolidated Tel. & Elec. Subway Co.*, 193 Misc. 1001, 85 N. Y. S. 2d 631; *Wilner* v. *Department of Health*, 5 Misc. 2d 331, 159 N. Y. S. 2d 601.

2. The constitutional rights of Dr. David Wassermann were violated in that the hearing was not held in an impartial forum, but, on the contrary, was held in a forum:

(a) of the accusers' own selection,

(b) friendly to the accusers.

This is in violation of the law, as set forth in *Bender* v. *Board of Regents of University*, 262 App. Div. 627, 30 N. Y. S. 2d 779.

(c) The subject matter was precisely the interpretation of legal prohibitions partaking of the nature of questions of law. The interpretation of the legal questions required that it be done by people trained or educated in the law. The triers of fact in the instant case were not shown to have had the necessary qualifications.

3. The proof as to the filing of the rule was not established.

See: *People* v. *Calabro*, 7 Misc. 2d 732, 170 N. Y. S. 2d 876; *People* v. *Cull*, 26 Misc. 2d 668, 210 N. Y. S. 2d 10, aff'd 10 N. Y. 2d 123, 218 N. Y. S. 2d 38.

4. The foregoing, together with the other points made in this brief, such as the *ex post facto* application of certain provisions of law and the rules, constitute the deprivation of appellant's property without due process of law.

* * *

Court of Appeals Remittitur

COURT OF APPEALS
STATE OF NEW YORK } ss.:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 5th day of April in the year of our Lord one thousand nine hundred and sixty-two, before the Judges of said Court.

WITNESSES:

The HON. CHARLES S. DESMOND,
Chief Judge Presiding.

RAYMOND J. CANNON, Clerk.

Remittitur April 5, 1962.

No. 58

In the Matter of the Application
of
DR. DAVID WASSERMANN,
Appellant,
For an Order, etc.,
vs.
THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,
Respondent.

BE IT REMEMBERED, that on the 13th day of February in the year of our Lord one thousand nine hundred and sixty-two Dr. David Wassermann, the appellant in this cause, came here unto the Court of Appeals, by John P. Weatherwax, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And the Board of Regents of the University of the State of New York, the respondent in said cause, afterwards appeared in said Court of Appeals by Louis J. Lefkowitz, Attorney General. Which said Notice of

Court of Appeals Remittitur

Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, the said Court of Appeals having heard this cause argued by Mr. F. Walter Bliss, of Counsel for the Appellant, and by Mr. Robert W. Bush, of Counsel for the Respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed without costs. And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, Third Judicial Department there to be proceeded upon according to law.

WHEREFORE, it is considered that the said order be affirmed, without costs, as aforesaid, and hereupon, as well, the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, Third Judicial Department before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division, before the Justices thereof, &c.

/s/ RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

Court of Appeals, Clerk's Office
Albany, April 15, 1962.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(SEAL)

/s/ RAYMOND J. CANNON,
Clerk.

Motion to Amend Remittitur

COURT OF APPEALS.

STATE OF NEW YORK

In the Matter of the Application

of

DR. DAVID WASSERMANN,
Petitioner-Appellant,

For an Order pursuant to Article 78 of the Civil Practice Act,

against

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,
Respondent-Respondent.

Upon the annexed affidavit of John P. Weatherwax, sworn to on the 25th day of April, 1962, the Record on Appeal, the Briefs of the petitioner-appellant and the respondent-respondent filed in this Court in the above-entitled matter, the Decision and Opinion of this Court rendered in the above-entitled matter on the 5th day of April, 1962, the Remittitur thereon prepared as provided by law and upon all the proceedings heretofore had herein, it is

ORDERED that the respondent-respondent show cause at a Term of the Court of Appeals of the State of New York held at the Court of Appeals Building in the City of Albany, New York, on the 7th day of May, 1962 at two o'clock in the afternoon of that day or as soon thereafter as counsel can be heard why an order should not be made

amending the Remittitur herein by adding thereto the following:

> Upon the appeal herein there was presented to and necessarily passed upon by this Court questions under the Constitution of the United States, viz: the petitioner-appellant's contention that his rights to due process of law under the Fifth and Fourteenth Amendments of the Constitution of the United States were denied to him and that he is being deprived of his rights to practice medicine in the State of New York in violation thereof. That the Court of Appeals held herein that petitioner-appellant was not denied his constitutional rights and that there was no merit to petitioner-appellant's contentions,

and why such other and further relief should not be granted as to this Court may seem just and proper, and it is further

ORDERED that the respondent-respondent be and is hereby stayed from all proceedings under the order of the Appellate Division of the Supreme Court, Third Judicial Department, herein which was affirmed by this Court pursuant to its decision and opinion rendered on the 5th day of April, 1962; until a hearing and determination of this application, and it is further

ORDERED that service of a copy of this order together with the papers upon which it is granted made upon the Attorney General of the State of New York, attorney for the respondent-respondent, on the day of May, 1962 shall be sufficient and timely service thereof.

Dated: Albany, New York
April 27th, 1962.

s/ SYDNEY F. FOSTER
Judge of the Court of Appeals
of the State of New York

Affidavit of John P. Weatherwax in Support of Motion to Amend Remittitur

COURT OF APPEALS

STATE OF NEW YORK

In the Matter of the Application

of

DR. DAVID WASSERMANN,

Petitioner-Appellant,

For an Order pursuant to Article 78 of the Civil Practice Act,

against

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondent-Respondent.

STATE OF NEW YORK
COUNTY OF RENSSELAER } ss.:

JOHN P. WEATHERWAX, being duly sworn, deposes and says:

1. That he now is the attorney of record for the petitioner-appellant on his appeal to the Court of Appeals in the above entitled matter. That Hon. F. Walter Bliss is associated with deponent in the prosecution of the petitioner-appellant's appeal to this Court and presented the argument on behalf of petitioner-appellant to this Court on the 26th day of February, 1962.

2. That the respondent-respondent was represented in this Court upon such appeal by Louis J. Lefkowitz, Attorney General of the State of New York, Robert W. Bush, Assistant Attorney General, of Counsel.

3. That after due deliberation this Court rendered its decision in the above entitled matter and its opinion therein was filed on the 5th day of April, 1962.

4. That upon such appeal the petitioner-appellant presented and submitted to this Court his contentions that the order appealed from was for several reasons illegal and improper and further was in violation of his rights under the Constitution of the United States in that he was being deprived of his rights, viz: his right and license to practice medicine in the State of New York, without due process of law, as guaranteed him by the Fifth and Fourteenth Amendments of the Constitution of the United States.

5. That petitioner-appellant's contentions and the questions presented thereby are set forth in petitioner-appellant's brief submitted to this Court on such appeal to which reference is respectfully made. To summarize—

> POINT I submitted the contention that petitioner-appellant was not guilty, as a matter of law, of the charge of "fraud or deceit in the practice of medicine" or of the charge "unprofessional conduct therein", for the reason that no statute or regulation providing that the acts which petitioner-appellant was charged to have committed and for which his license to practice medicine in the State of New York was revoked by respondent-respondent, was in legal force and effect, further that the acts which he was alleged to have committed were not within the purview of the statute and regulation that the respondent-respondent contended to be applicable, thus his conviction of such acts and the resultant

punishment by respondent-respondent were without legal basis.

Point II submitted the contention that respondent-respondent's retroactive application of the Education Law, Section 6514, subdivision 2(g) and Regents Regulation 30, subdivision 4 were improper and not a legal basis to support the charges made against petitioner-appellant and a determination of his guilt thereon and the revocation of his license to practice medicine in the State of New York.

Point III submitted the contention that the Grievance Committee of the Board of Regents of the State of New York which found petitioner-appellant guilty of the charges made against him was not "legally constituted" and that therefore its acts respecting the petitioner-appellant were illegal and a nullity.

Point IV submitted the contention that the determination of the Board of Regents which resulted in petitioner-appellant being deprived of his license to practice medicine in the State of New York is in violation of the petitioner-appellant's rights under the Constitution of the United States in several respects, which are set forth in said Point to which attention is respectfully directed.

It is respectfully submitted that all of petitioner-appellant's contentions presented upon his appeal to this Court involved a constitutional question as to petitioner-appellant being deprived of his rights, viz: his right and license to practice medicine in the State of New York "without due process of law" as guaranteed him by the Fifth and Fourteenth Amendments of the Constitution of the United States.

6. That this Court in rendering its decision herein overruled all of the contentions and legal points pre-

sented by petitioner-appellant upon such appeal, and affirmed the order appealed from of the Appellate Division of the Supreme Court, Third Judicial Department. That while the decision of this Court stated that it had considered all of the issues presented by the petitioner-appellant it did not specifically state that questions under the Constitution of the United States were presented to and necessarily passed upon by the Court.

7. The remittitur upon this appeal has been prepared and is ready for filing according to law. The remittitur does not specifically state that questions under the Constitution of the United States were presented to and necessarily passed upon by this Court.

8. The petitioner-appellant deems that the decision of this Court in affirming the order appealed from is depriving him of his license to practice medicine within the State of New York, is in violation of his constitutional rights under the Constitution of the United States and that he has been deprived of such rights without due process of law as guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States and accordingly desires to obtain a review of such decision by the United States Supreme Court through a writ of certiorari. Therefore, petitioner-appellant desires that the remittitur herein be amended to include therein the appropriate recitation with respect to the questions under the United States Constitution which were presented to and passed upon by this Court upon such appeal.

9. It is deemed by petitioner-appellant and his attorneys that the aforesaid application and review by the United States Supreme Court should be made as soon as possible and accordingly it is most important that this application be considered by this Court at its earliest convenience in

order that the appropriate and necessary procedural steps may be taken to obtain such contemplated review by the United States Supreme Court. Accordingly an order to show cause bringing this matter on for consideration is respectfully requested.

10. That no previous application has been made for the relief sought upon this application.

WHEREFORE, your deponent on behalf of the petitioner-appellant respectfully prays this Court to grant an order amending the remittitur herein by adding thereto the following

> Upon the appeal herein there was presented to and necessarily passed upon by this Court questions under the Constitution of the United States, viz: the petitioner-appellant's contention that his rights to due process of law under the Fifth and Fourteenth Amendments of the Constitution of the United States were denied to him and that he is being deprived of his rights to practice medicine in the State of New York in violation thereof. That the Court of Appeals held herein that the petitioner-appellant was not denied his constitutional rights and that there was no merit to petitioner-appellant's contentions;

and for such other and further relief as may be proper in the premises.

/s/ JOHN P. WEATHERWAX

Sworn to before me this
25th day of April, 1962.

ROSE M. TEMPLE
Notary Public, State of New York
Residing in Rensselaer County
Commission expires March 30, 1963

Court of Appeals Order Denying Motion to Amend Remittitur

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Tenth day of May A. D. 1962.

Present,

HON. CHARLES S. DESMOND, *Chief Judge, presiding.*

No. 385

In the Matter of the Application

of

DR. DAVID WASSERMANN,

Appellant,

For an Order, etc.,

vs.

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondent.

A motion to amend the remittitur in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

A copy

GEARON KIMBALL,
Deputy Clerk.

Appellate Division Order Adopting Remittitur

At a Term of the Supreme Court, Appellate Division, Third Judicial Department of the State of New York, held in and for the Third Department at the County Court House in the City of Albany, New York, commencing on the 30th day of April, 1962.

Present:

Hon. Francis Bergan,
Presiding Justice,
Hon. William H. Coon,
Hon. J. Clarence Herlihy,
Hon. James Gibson,
Hon. Walter B. Reynolds,
Hon. Donald S. Taylor,
Associate Justices.

In the Matter of the Application

of

Dr. David Wassermann,
Petitioner-Appellant.

For an Order pursuant to Article 78 of the Civil Practice Act,

against

The Board of Regents of the University of the State of New York,
Respondent-Respondent.

The petitioner, above named, having appealed to the Court of Appeals of the State of New York by permission

of that Court, pursuant to the provisions of Section 589 of the Civil Practice Act, from an order of this Court which unanimously affirmed the final determination of the Board of Regents of the State of New York under review in this proceeding which ordered the revocation of petitioner's license to practice medicine in this State, and the matter having duly come on to be heard in the said Court of Appeals, and that Court, after hearing the cause argued by John P. Weatherwax (F. Walter Bliss, Esq., of counsel) and by Louis J. Lefkowitz, Attorney General of the State of New York (Robert W. Bush, Assistant Attorney General, of counsel) attorney for the respondent, having on April 5, 1962 ordered and adjudged that the aforesaid order of the Appellate Division of the Supreme Court, Third Judicial Department, appealed from be unanimously affirmed, without costs; and it was also further ordered by the said Court of Appeals, that the record aforesaid, and the proceedings in that Court be remitted to the Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law;

And petitioner thereafter having moved in said Court of Appeals to amend the remittitur herein by adding thereto the following:

> "Upon the appeal herein there was presented to and necessarily passed upon by this Court questions under the Constitution of the United States, viz.: the petitioner-appellant's contention that his rights to due process of law under the Fifth and Fourteenth Amendments of the Constitution of the United States were denied to him and that he is being deprived of his rights to practice medicine in the State of New York in violation thereof. That the Court of Appeals held herein that petitioner-appellant was not denied his constitutional rights and that there was no merit to petitioner-appellant's contentions,"

and such motion having been opposed, and after due deliberation having been made thereon, petitioner's motion was denied by the Court of Appeals on the 10th day of May, 1962.

Now, upon reading and filing the remittitur of the Court of Appeals dated the 5th day of April, 1962, and on motion of Louis J. Lefkowitz, Attorney General, attorney for the respondent, it is

ORDERED, that the order, decision and judgment of the Court of Appeals be and the same hereby are in all respects made the order, decision and judgment of this Court.

/s/ JOHN J. O'BRIEN,
Clerk.

ENTERED: May 16, 1962.

A true copy.
John J. O'Brien,
Clerk.

Contemporary Newspaper Articles

(PHOTOSTAT)

(See opposite page ☛)

WALL ST. CLOSING
COMPLETE TABLES

NEW YORK Journal American

No. 26,899—DAILY FRIDAY, JANUARY 12, 1962 10 CENTS

7TH SPORTS
RACING
☆☆☆☆☆☆☆
SPORTS COMPLETE

Bare Bill Padding by MDs

Insurance Firms Are Victimized

By WALTER BAZAR

Charges of bill-padding and other fraudulent practices by doctors are pouring into the State Board of Regents "by the hundreds," the N. Y. Journal-American learned today.

Many of the physicians were said to be in New York City.

The district attorneys in all five boroughs are investigating at least 900 complaints.

Many of complaints were turned over to authorities by the Journal-American as a result of its tow-car racket investigation.

The data was given to August J. Bardo Jr., director of the Division of Professional Conduct, at 2 W. 45th st.

The padding of bills enabled doctors to collect much greater amounts than they were normally entitled to from insurance companies.

Information on complaints coming in by the "hundreds" originated with Walter R. King, special assistant to Education Commissioner James E. Allen Jr.

The Board of Regents, which has disciplinary powers over doctors and other professionals, is part of the State Education Department.

From his Albany office, Mr. King told the Journal-American

Federal government in November.

NEW YORK MIRROR, SATURDAY, DECEMBER 31, 1960

tion in Color — Pictures an

Prize Today a Whopping

Accuse MDs Of Insurance Fraud Plots

A widespread investigation of doctors throughout the state who may be involved in a giant racket to defraud insurance companies was disclosed yesterday by an official of the Board of Regents.

The head of the board's Division of Professional Conduct, August J. Bardo, said that 81 doctors in Brooklyn alone will be investigated.

Calling for "more rigorous and effective" disciplinary action in cases involving "ambulance chasing," Bardo said lawyers, doctors and insurance adjustors conspired to defraud insurance companies of millions of dollars.

BARDO said the licenses of two doctors here already have been taken up by the Regents Board, which administers the licensing of all professions except law.

He said Dr. John A. Shaw, of 610 Sheffield Ave., Brooklyn, and Dr. David Wasserman, of 285 West End Ave., had been obliged to surrender their licenses.

Bardo said investigators are probing "many cases" in Manhattan, and in the Bronx, Queens, Nassau and Suffolk counties.

Saying "it is antipated investigations will be conducted in Up-[illegible] be cases running into the hundreds."

THE REGENTS BOARD, which seeks an additional $100,000 appropriation for its investigative staff, asserted that in many situations lawyers sent clients to doctors who made false diagnoses, rendered inflated bills and charged for office visits that were never made.

The probe into ethical behavior of doctors is the result of an inquiry into phony insurance claims by the Appellate Division and the Brooklyn District Attorney's office.

Lawyers excepted, the Regents Board has the power to revoke licenses and discipline professional persons throughout the state.

Offshore Holiday

TOKYO, Dec. 30 (AP).—Radio Peiping said today Red China's batteries opposite Quemoy and Matsu islands have been ordered to hold their fire tomorrow and Sunday so the Nationalist Chi-

NEW YORK Journal American

No. 26,900—DAILY SATURDAY, JANUARY 13, 1962 10 CENTS

State Probes 'Bill Kiting' by Doctors Here

Albany, Jan. 12 (UPI).—The State Board of Regents said today it was investigating complaints of alleged "bill kiting" in accident cases by some 1,300 New York City doctors and den-

1,500 City MDs Face State Probe In Fraud Cases

At least 1,500 New York City doctors face investigation—and possible disciplinary or criminal action—on charges of bill-padding insurance claims or other fraudulent practices.

This was disclosed today by August J. Bardo, director of [illegible] $10,000,000-a-year tow-car scandal. They were turned over

Ac[illegible] New[illegible] Sli[illegible]

HUA[illegible] (UPI).—[illegible] ties to[illegible] mediat[illegible] resider[illegible] Canyo[illegible]

[illegible] then killed himself, [illegible]ndition. D'Alesio was [illegible]en he committed sui[illegible] Pe Darlene.

State Probes 'Bill Kiting' by Doctors Here

Albany, Jan. 12 (UPI) — The State Board of Regents said today it was investigating complaints of alleged "bill kiting" in accident cases by some 1,300 New York City doctors and dentists.

(August J. Bardo, director of the regents' professional conduct division, said that, in all, complaints of fee padding and other unethical conduct were received against more than 1,500 metropolitan area physicians.

Multiplied Fee by 40

(He said some of the complaints accuse doctors of charging as much as 40 times more for a service than normally would be asked, the Associated Press reported. Others claim physicians charged individuals for services never actually given, such as X-rays.

(Bardo said the complaints came from insurance firms, the offices of New York district attorneys and individual patients.)

Started in Brooklyn

A spokesman for the board said the cases were the outgrowth of an investigation that began in Brooklyn several years ago and spilled over into Queens and Bronx Counties.

The spokesman said the alleged bill kiting definitely was organized, but added it was impossible to tell if one group or a number of separate ones were involved. He said a small number of lawyers also was involved, and that their activities were being investigated by the Court of Appeals.

The Board of Regents licenses and polices all professions except law in New York State.

The spokesman said at least three doctors had lost their licenses within the last six months.

1,500 City MDs Face State Probe In Fraud Cases

At least 1,500 New York City doctors face investigation—and possible disciplinary or criminal action—on charges of bill-padding insurance claims or other fraudulent practices.

This was disclosed today by August J. Bardo, director of the Division of Professional Conduct of the State Dept. of Education, who said that about 30 physicians already had been found guilty of misconduct.

"About 14 had their licenses revoked by the Board of Regents," he said.

Mr. Bardo revealed that about 40 hearings are now in progress and 8,000 suspicious accident insurance claims are still to be checked.

SPOTLIGHTED BY J-A

Numerous complaints were received by the N. Y. Journal-American after its exposure of the phony accident claim racket in connection with the investigation into the city's $10,000,000-a-year tow-car scandal. They were turned over to authorities.

Mr. Bardo said the majority of cases involved claims against insurance carriers in negligence cases—many of them connected with auto accidents.

"They include exaggerated medical reports, exaggerated reports on the number of visits for treatment, and X-ray charges where there never were X-rays," Mr. Bardo said.

State Att. Gen. Louis J. Lefkowitz said four doctors already have been indicted and cases against 16 others have been completed or are pending before the medical grievance committee of the State Board of Regents.

...d then killed himself, ...ssidian, D'Alesio was ...on he committed suicide by Darlene. (UPI TELEphoto)

...ties to... ...mediat... ...resident... Canyon... ...already... a repe... disastr...

Offic... duced t... masses... the sig... arcana... Peruvia...

...day ...ry good "Tru... At or...spreaded ... danger."more. He tol... ...ions of ...know who ... I know. He ... in a di... ...he slipped ... lake w... ...spy for G-2, ... than an... for prote...

low-co...

Pizarro got other... watchers...onately held ...and are will return... Cuba.

"When we get back," ... "there will be no place ... to run."

She told about the ... of Eddy.

"I was talking to ... phone. Love talk. It ... o'clock in the morning. ... come for him. He ... 'Chubro!' before the ... dead, and I got rid of ... photos and all ... letters.

"Two hours later ...

Continued ...

ARM-BOOSTED MEN ON MUNICIPAL RELIEF

...ills will be asked to volunteer for street cleaning following snow and windstorms, the Bayonne, N. J., Borough Council decided today.

Say Gizenga Deserted Job

LEOPOLDVILLE, The Congo, Jan. 12 (AP).—A formal censure motion against Lumumbist Antoine Gizenga was introduced in the Congolese parliament today, charging him with deserting his official functions in Leopoldville and defying the parliament. He holds rank as deputy premier in the Leopoldville central government.

In Stanleyville, Gizenga is reported openly at odds with his one-time army supporter, Gen. Victor Lundula. Reliable reports said Lundula's troops have arrested four of Gizenga's top lieutenants.

Today's tough parliamentary move was backed by 44 members of the lower house of deputies, including many of Gizenga's one-time supporters.

...Dec. 30. — Blonde ...lady Ljuris is only ... has lived a lifetime, ...ears she became a ... In less than that ... a freedom fighter, ... better circumstances ... of her 200,000 coun... ...e. Hedy lives in a ... ...stow on N. W. 36th ... of lawyers also was involved, and her father, Julio, ...uthy businessman, ... other, Hayden. But ...

TEARS SPILLED from Hedy's big blue eyes as she told how Eddy Suarez Rivas, the one "I love forever," was jailed through the perfidy of a "friend" and she was stripped of her clothes on a Havana street.

"Eddy and I were in the MRR (Movement for Revolutionary Recovery) together," she said. "That is a violently anti-Communist organization that is alive and growing in Cuba.

"We were passing out guns ...boy friend; only bitter memories, and hope.

...$360 to him, but he added "Julie" gave back $65 of the money.

TODAY'S INDEX

Backwash	19	Jack O'Brien	12
Bridge	30	Lonely Persons	17
Confused	40	Patterns	30
Comics	38, 39	Wardle's Pages	19
Bob Considine	19	Pat Doctor	23
Cross-Word	38	Robert Peterson	19
Editorial	18	Places to Dine	15
Financial	32, 33	Real Estate	34
Fishing	35	Records	19
Food, Cooking	11	Sport Set	10, 11
Radio Guide	22	Leon Sobel	19
Helena	11	C. Sokolsky	18
Horoscope	38	Sports	24 to 28
Eliquiles	15	Theatres	15 to 17
Kaltenborn	18	TV & Radio	12, 13
Dr. Kelser	11	Want Ads	35 to 37
Movie Clock	17	Walking Wall	40
Music	18	Your Answers	38
Obituaries	32		

Phone Your News and Photo Tips to COrtlandt 7-1212

...ACT... ...SECOND Off 1:48 ... $2 DOUBLE—... THIRD Off 1:39½ ...

Gridder Ask...

BALTIMORE, Jan. 12 (UP...—Halfback Lenny Moore of ... Baltimore Colts has filed ... claims with the Worker... Compensation Commission ... ...leging permanent disabilities ... was learned today.

H. Morton Bacon, Mr. Moore's attorney, explained that "football player is no different than a person working ...

...doctors in Brooklyn alone will be investigated."

Calling for "more rigorous and effective" disciplinary action in cases involving "ambulance chasing," Bardo said lawyers, doctors and insurance adjusters conspired to defraud insurance companies of millions of dollars.

BARDO said the licenses of two doctors here already have been taken up by the Regents Board, which administers the licensing of all professions except law.

He said Dr. John A. Shaw, of 610 Sheffield Ave., Brooklyn, and Dr. David Wasserman, of 295 West End Ave., had been obliged to surrender their licenses.

Bardo said investigators are probing "many cases" in Manhattan, and in the Bronx, Queens, Nassau and Suffolk counties.

Saying "it is anticipated investigations will be conducted in Upstate areas," Bardo added:

"It would appear there could ...

THE REGENTS BOARD which seeks an additional $100,000 appropriation for its investigative staff, asserted that in many situations lawyers sent clients to doctors who made false diagnoses, rendered inflated bills and charged for office visits that were never made.

The probe into ethical behavior of doctors is the result of an inquiry into phony insurance claims by the Appellate Division and the Brooklyn District Attorney's office.

Lawyers excepted, the Regents Board has the power to revoke licenses and discipline professional persons throughout the state.

Offshore Holiday

TOKYO, Dec. 30 (AP) — Radio Peiping said today Red China's batteries opposite Quemoy and Matsu islands have been ordered to hold their fire tomorrow and Sunday so the Nationalist Chinese defenders can spend "a calm and happy New Year."

...f Hava...

DAILY NEWS, SATURDAY, DECEMBER 31, 1960

State Fingers 80 Doctors in Insurance Gyp

By HENRY MACHIRELLA

A Board of Regents crackdown on doctors who reportedly conspired with lawyers and insurance adjustors to defraud insurance companies of millions of dollars has already involved 80 Brooklyn doctors and may eventually affect hundreds more throughout the state.

Indicating a stepup of the probe into ambulance-chasing by the medics, August J. Bardo, director of the board's division of professional conduct, said yesterday he is asking an additional $100,000 for the mushrooming investigation.

Bardo said 20 of the Brooklyn cases are in various stages of completion while 60 remain to be processed. Still ahead are investigations of the massive racket in the Bronx, Manhattan, Queens, Nassau and Suffolk Counties.

Two Lose Licenses

The board not only supervises the state's educational system but also issues and revokes doctors' licenses.

The board has already revoked the licenses of two physicians and has started action against a third. Bardo said the probe involves "men of very substantial practice and of recognized standing and many are high in hospital circles."

The board's crackdown stems from an investigation of phony insurance claims conducted by the Appellate Division and the rackets bureau of the Brooklyn District Attorney's office.

Docs Never Saw Claimants

The probe revealed that lawyers sent clients in accident cases to doctor accomplices. Bardo said the docs hiked their bills, made phony diagnoses and charged for office visits that were never made.

In some cases, he added, the doctors never saw the clients at all, merely turning over their office stationery to the lawyers.

The two medics who lost their licenses were Dr. John A. Shaw of 610 Sheff Ave., Brooklyn, and Dr. David Wasserman of 295 West End Ave. Both have appealed the revocations to the Supreme Court.

Action against the racketeering lawyers has resulted in 10 disbarments, six resignations from the bar, six suspensions and nine censure.

...the Journal-American as a result of its tow-car racket investigation.

"The data was given to August J. Bardo Jr., director of the Division of Professional Conduct, at 2 W. 45th st.

"The padding of bills enabled doctors to collect vastly greater amounts than they were normally entitled to from insurance companies.

Information on complaints coming in by the "hundreds" originated with Walter R. King, special assistant to Education Commissioner James E. Allen Jr.

"The Board of Regents, which has disciplinary powers over doctors and other professionals, is part of the State Education Department.

From his Albany office, Mr. King told the Journal-American:

"We've never had so many complaints before. We're getting them by the hundreds. They all involve automobile accident cases.

"It is an outgrowth of the investigation started a few years ago by the Brooklyn District Attorney's office.

"It has ballooned all out of proportion."

WIDESPREAD IN BRONX

Recently, the spokesman said, the investigation spilled over to the District Attorneys' offices in Bronx, Queens Manhattan and Staten Island.

It was especially widespread in the Bronx and Queens, he stated.

"As much as perhaps 90 per cent of the complaints have come from New York City's district attorneys," he added.

"The amount of complaints is not unmanageable yet, but we think we'll have to add more people to our New York office to handle the situation."

Her referred to Mr. Bardo's office.

The spokesman added:

"I haven't any figure as to the exact number of complaints. But last week when the board held a meeting to decide how to handle the volume, we expected well over 1,000. We haven't yet counted them.

"It appears that all, or almost all, of them deal with fraudulent bills submitted for insurance claims."

THE WEATHER

U.S. Weather Bureau Forecast

Increasing cloudiness late this afternoon and tonight; low tonight around 20. Tomorrow, partly cloudy, high in 30s.

...P.M. Temp. 36 Humidity 35. Barometer 30.15 inches, falling.

HOURLY TEMPERATURES

8 a.m.	27	1 p.m.	36
9 a.m.	28	2 p.m.	36
10 a.m.	29	3 p.m.	36
11 a.m.	30	4 p.m.	36

(Details on Page 19)

THE READER'S CHOICE

The Journal-American Has the Greatest Circulation in the Evening Field

...CABE said up a year ed upon a sixth floor 9 the street which is a zone in the

...WIN DAY! ...tory and ...Page 7